

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P.No.8880 of 2005

Date of Decision : 19.12.2007.

Rajwant Singh

.....Petitioner

versus

Food Corporation of India and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

HON'BLE MR.JUSTICE MOHINDER PAL

Present : Mr.Jasdeep Singh Wasu, Advocate for the petitioner.
Mr.U.S.Dhandi, Advocate for the respondents.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT

HEMANT GUPTA, J.

The challenge in the present writ petition is to the order passed by the Disciplinary Authority dated 27/28.6.2002, Annexure P-2 and the order in appeal dated 8.9.2004, Annexure P-5, whereby minor penalty of recovery of Rs.36,513.40 was imposed upon the petitioner.

The petitioner was charge-sheeted on 26.2.2002 for causing loss to the respondent-Corporation while working at Naushera Pannuan during the years 1993-95. It was averred in the show cause notice issued to the petitioner that had adequate care been taken at the time of purchases/acceptance of stocks as per the laid down specification and after proper weighment as per the standing instructions besides preserving the stocks by conducting periodical supervision, aeration etc., the storage loss would have not been taken. Therefore, the notice contemplated that as to

why a sum of Rs.1,09,594.18, as the loss suffered by the Corporation on account of financial impropriety, be not recovered from the petitioner.

In reply to the show cause notice, the petitioner asserted that he received only Stack No.2-D/1 in the month of March, 1993 and he was on tour from Naushera Pannuan and that after returning from tour, he noticed some pilferage in the rice stocks. He reported the matter to the District Office, Amritsar to constitute a committee to supervise the issue/dispatch operations of the stock. The learned District Manager, in the impugned orders, found that the rice stocks in Stack No.2-D/1 out of three stacks were received by him and the storage loss to the extent of 9.42% has been observed which is abnormal as beyond 2%. Therefore, a penalty of Rs.36,513.40 was imposed on the petitioner. The said order has been affirmed in appeal as well.

Learned counsel for the petitioner has vehemently argued inter-alia that the learned Appellate Authority has not adverted to the various aspects raised by the petitioner in the memorandum of appeal and thus the order passed by the learned Appellate Authority is not sustainable as the questions raised by the petitioner have not been adverted at all. However, we do not find any merit in the said argument. No doubt, the petitioner has filed a detailed memorandum of appeal, but the primary argument raised by the petitioner was that he was not posted at Naushara Pannuan at the time of issue of rice stock and that pilferage has taken place in his absence. It is also pointed out that storage loss has occurred on account of longer period of storage. However, the learned Appellate Authority has considered the issues raised by the petitioner and found that the petitioner has admitted the acceptance of stack No.2-D/1 in the month of March, 1993. It was found

attention to S.L.Kapoor Vs. Jagmohan and Managing Director, ECIL Versus B.Karunakar in SCC paras 25, 26 and 28. The decisions relied on and cited above make one thing clear, namely principles of natural justice cannot be reduced to any hard and fast formulate and as said in Russel Vs Duke of Norfolk, these principles cannot be put in a straitjacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure a fair hearing, a fair deal to a person whose rights are going to be affected. In our opinion, the approach and test adopted in Karunakar case should govern all cases where the complaint is not that there was no hearing, no notice, no opportunity and no hearing but one of not affording a proper hearing that is adequate or a full hearing or violation of a procedural rule or requirement governing the enquiry.

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In the judgment “*Narinder Mohan Arya Versus United India Insurance Co. Ltd and others, (2006) 4 Supreme Court Cases-713*” the Hon'ble Supreme Court held to the following effect:-

“xx xx xx xx

33. An appellate order, if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

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In “*S.N.Mukherjee Versus Union of India, AIR 1990 SC-1984*” the Hon'ble Supreme Court found that where the Enquiry Officer has held the charges proved against the delinquent official and the enquiry has been accepted by the Disciplinary Authority, the Appellate Authority is not required to pass a detailed speaking order in case of affirmation of the order. It was held to the following effect:-

“XX XX XX XX

In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions, irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where that order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

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Keeping in view the aforesaid principles, a minor penalty of the recovery of the storage loss has been imposed upon the petitioner. Such loss has been assessed after considering the stand of the petitioner that he

was in fact, accepted Stack No.2-D/1. The learned Disciplinary Authority as well as the learned Appellate Authority has considered the entire arguments and passed a speaking order. The order passed by the learned Appellate Authority touches the basic issues raised by the petitioner. Therefore, we do not find that there is any violation of the principles of natural justice in the present case.

Consequently, we do not find any illegality or irregularity in the orders by the Disciplinary Authority and the Appellate Authority, which may warrant interference of this Court in exercise of writ jurisdiction. The writ petition stands dismissed.

(HEMANT GUPTA)
JUDGE

19-12-2007

**mohinder*

(MOHINDER PAL)
JUDGE